

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

15-cr-632 (JGK)

ORDER

JOSE HEBERTO ALVAREZ DENIS,

Defendant.

On September 6, 2022, this Court entered a Memorandum Opinion and Order denying the defendant's pro se motion seeking reconsideration of a previous denial of compassionate release, which the Court treated as both a motion for reconsideration and a renewed motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). See ECF No. 105 (the "Compassionate Release Order"). Under Federal Rule of Appellate Procedure 4(b)(1)(a), any notice of appeal from the Compassionate Release Order was originally due on September 20, 2022.

On October 17, 2022, this Court received the defendant's submission styled as a "Notice of Appeal" from the Compassionate Release Order, which included a request for "permission to file" the untimely "notice" of appeal "[t]o the Second Circuit." ECF No. 106, at 1. The defendant, a federal inmate, states in the submission that he never received a copy of the Compassionate Release Order because he was moved from one prison facility to another on September 7, 2022, then quarantined pursuant to a

COVID-19 prevention policy. Id. The defendant filed the notice of appeal and the request for an extension of time upon learning about the Compassionate Release Order from his family. Id.

Federal Rule of Appellate Procedure 4(b)(4) provides that

[u]pon a finding of excusable neglect or good cause, the district court may -- before or after the time has expired, with or without motion and notice -- extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

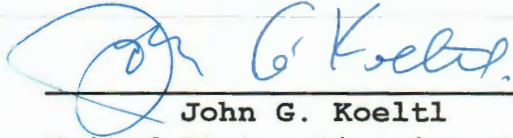
Fed. R. App. P. 4(b)(4). Good cause exists for an extension of time here because the pro se defendant never received a copy of the Compassionate Release Order in prison, and as a result, it can be assumed that he was unaware of the September 20, 2022 deadline to notice an appeal. Further, because the thirty-day period following the expiration of the original appeal deadline ends on October 20, 2022, the defendant's attempted notice of appeal from the Compassionate Release Order is indeed timely under Rule 4(b)(4). Thus, the defendant's request to file a belated notice of appeal is **granted**, and the notice of appeal itself is deemed timely.

The defendant did not indicate whether he wishes to pursue his appeal in forma pauperis. However, the Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Compassionate Release Order cannot be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 348, 444-45 (1962). The

Clerk is respectfully directed to mail a copy of this Order to the pro se defendant at the address provided for FCI Fort Dix, the facility to which the defendant was transferred. The Clerk is directed to note service on the docket.

SO ORDERED.

Dated: New York, New York
October 20, 2022



John G. Koeltl
United States District Judge